IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3043 of 2001
with
CIVIL APPLICATION NO.4851 OF 2005
IN
SPECIAL CIVIL APPLICATION NO.3043 OF 2001

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MANAGER DHANSURA GROUP CO-OPERATIVE COTTON SALE - Petitioner(s)

Versus

JESANGBHAI KODARBHAI NADIA - Respondent(s)

==========

Appearance :
MR RC JANI for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.
MR US BRAHMBHATT for Respondent No(s).: 1.
==========

CORAM : HON'BLE MR JUSTICE M.R. SHAH
Date : 05/08/2005

ORAL JUDGMENT

1. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner society has challenged the legality and validity of the judgment and award passed by the Labour Court, Himatnagar dated 19.12.2000 passed in Reference (LCH) No.167 of 1996 in allowing the said Reference by directing the petitioner to reinstate the respondent with 50 % of the backwages and continuity of service.

3. The respondent workman was serving as Daily Rated Workman with the petitioner society and as and when the work was available considering the season and on availability of cotton / raw material as the society is having ginning factory and the cotton crop is available only five to six months in a year and he was offered the work during that season. The respondent raised the industrial dispute challenging his alleged termination with effect from 6.12.1983 as he was not called for duty which was referred to the Labour Court, Himatnagar for its adjudication being Reference (LCH) No.167 of 1986 (Old No. 990 / 1984) and the Labour Court, Himatnagar by its judgment and award dated 19.12.2000 passed the order allowing the said Reference directing the petitioner to reinstate the respondent workman with 50 % backwages with continuity of service. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present special civil application under Articles 226 and

227 of the Constitution of India.

4. Shri R.C.Jani, learned advocate appearing on behalf of the petitioner has taken me to the deposition of the respondent workman in which it has been specifically admitted by the workman that the factory – ginning mill is running six to seven months in a year and as and when there is season, he was called for duty and on commencement of the season, he was coming to the Gin and on completion of the season, he was voluntarily leaving the factory and therefore, it is submitted that it is an admitted position that the factory was seasonal and the workman was offered work in the season looking to available work and therefore, it is submitted that the Labour Court has materially erred in directing the petitioner to reinstate the respondent workman with 50 % backwages. Shri Jani, learned advocate has also further submitted that they have never denied to the respondent workman and even today also they are ready and willing to offer work to the respondent workman in the season as and when the work is available as was being offered to him earlier.

5. Shri U.S.Brambhatt, learned advocate appearing on behalf of the respondent workman has submitted that in view of the deposition of the respondent workman himself to the effect that ginning factory run by the

petitioner society is seasonal and that as and when the work was available in the season, he was offered work and the respondent workman was not in position to dispute that the factory is not seasonal. However, he has submitted that the respondent workman will be satisfied if he is offered the work in the season as was being offered to him earlier.

6. Considering the submissions on behalf of the learned advocates for the parties to the effect that the petitioner is ready and willing to offer the work to the respondent workman in season as was being offered to him earlier and that on the other hand, the respondent workman is satisfied if he is offered work as was being done earlier in the season, the judgment and award passed by the Labour Court, Himatnagar passed in Reference (LCH) No. 167 of 1996 dated 19.12.2000 is modified to the aforesaid extent and it is directed to the petitioner to offer the work to the respondent workman in the season as was offered to him earlier without fail. The judgment and award passed by the Labour Court, Himatnagar impugned in the present petition stands modified to the aforesaid extent.

7. Rule is made absolute to the aforesaid extent with no order as to

costs.

8. In view of the aforesaid order passed in the main Special Civil Application, no order requires on Civil Application No.4851 of 2005 and the same stands disposed of accordingly.

[M.R.Shah, J.]

=kailash=